

# SS-8 Determination—Determination for Public Inspection

Occupation 03IEI.18 Inspector	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

## Facts of Case

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The worker initiated the request for a determination of his work status as a compliance specialist. In this capacity he reviewed and verified daily records for cows in pasture to ensure the firm was in compliance with ██████████ national organic standards and the firm's individual plan. The director of compliance reviewed his work and gave the worker special projects as they came up in tax year 2014. The worker indicated that he obtained the job that was originally for 30-45 days in order to bring compliance reviews up to date. After that the contract was extended and became more open-ended, as long as there was work to do. The firm's business is described as producing and providing organic milk for private label manufacturing.

The firm's response was signed by the firm's president. The firm's business is described as organic milk production to complete a special project. The firm was in need of support and the worker was hired; the firm's Director of Compliance knew the worker and knew the worker was available to assist since he was unemployed at the time. The worker performed technical documentation and review services as a 'contractor for 30-45 days' which was amended for a few more months. The job was not advertised and was not considered an employment position. The technical documentation was reviewed; the compliance department was responsible for reviewing the documents and the systems; the worker had the expertise in document review.

The worker was trained in company practices, procedures, and the company's individual organic plan and how to look for discrepancies within the company. Each company that is certified organic, assemble documents according to the law, and each company has its own unique system, but the outcome is always the same – the end point documentation that is required. The job assignments came via telephone, email, or in person from the firm who monitored the progress and the results. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered at the company headquarters from 8 a.m. to 5 p.m.; both parties acknowledged the worker was required to perform the services personally.

The firm and worker concurred that the firm provided work space, computer, phone, a parking pass, and an email account; the worker did not incur expenses and did not lease space, facilities, or equipment. The firm paid the worker the agreed upon biweekly check; the customer paid the firm. Both parties responded that the worker was not at risk for a financial loss in this work arrangement. The fee paid under the original agreement as well as the hourly wage for the additional 20 hours per week for a few were more weeks, was agreed upon between the firm and the worker.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker stated that the firm knew he was searching for a full time position and there was no end date to his contract. The worker was not performing same or similar services for others during the same time frame. The worker left to pursue a full time position with another company and the job was unrelated to the services for this firm.

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## Analysis

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A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings..

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

## CONCLUSION

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.